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Paper No. 7

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OFFICE OF PETITIONS

In re Application of	:	
Ziaka-Vasileiadou et al.	:	
Application No. 09/973,459	:	DECISION DISMISSING
Filed: 10 October, 2001	:	PETITION
For: Integrated Processes for	:	
Olefin and Polyolefin Production	:	

This is a decision on the renewed petition filed by facsimile on 12 April, 2002, which is treated as a petition requesting that the above-identified application accorded a filing date of 24 September, 2001, rather than the presently accorded filing date of 10 October, 2001.

The petition is again dismissed.

The format and wording of the papers filed are that of an inexperienced applicant. In further prosecution, the services of a registered attorney or agent are recommended. Additionally, the petition is replete with grammatical and idiomatic errors.

Petitioners again assert that the application was deposited in United States Postal Service (USPS) Certified Mail (first-class) on 24 September, 2001. In support, petitioners have supplied an additional copy of a USPS Certified Mail Receipt postmarked 24 September, 2001, as well as a sales receipt from the USPS showing that postage was paid for a mailing to Washington, DC 20231 on 24 September, 2001. Petitioners have also included a copy of their return receipt postcard showing a USPTO stamp bearing the above-identified application number and a date of 10/10/01.

Petitioners argue that the postcard receipt serves as a "certificate of mailing" because petitioners hand-dated the

postcard receipt "09/24/2001" prior to depositing the application with the USPS. Petitioners further state:

[W]e are asserting that the late delivery of the patent application documents and receipt by the USPTO on the date of Oct. 10, 2002 (sic) was unavoidable and unpredictable due to the hold of the US postal service, dictated by the Sept. 11, 2002 (sic) events that required close search and examination of the delivered mail by the postal service. Under normal circumstances the above patent application should be delivered to the USPTO within 3-4 business days from its mailing date of Sept. 24, 2001. Because such postal delays affected all incoming mail, the petitions office has to consider that such delay was not the fall (sic) of the applicants and to offer the requested relief. The relief is related also with the applicants support of the related priority provisional application # 60/237,202 which was also filed on Oct. 3, 2000.

(emphasis in original)

The arguments have been considered, but are not persuasive. At the outset, it is noted that in the original petition, petitioners requested a filing date of 2 October, 2001, because petitioners were allegedly informed by a postal clerk that the application would be delivered to the USPTO "within about 7 business days" from the date of mailing. Petitioners now request a filing date of 24 September, 2001, the date petitioners allegedly mailed the application to the USPTO. As described *infra*, petitioners are not entitled to a filing date of either 24 September or 2 October, 2001, but a filing date of 10 October, 2001, the date the application was received in the USPTO.

The U.S. Patent and Trademark Office (Office) file is the official record of the papers originally filed in this application. A review of the papers originally filed reveals that no application papers were received on 24 September, 2001. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The fact that petitioner believes that the application was (or should have been) received in the Office on 24 September, 2001, is not more persuasive than the date the papers are shown to have been received in the official file.

Petitioners' assertion that the postcard receipt which petitioners hand-dated 09/24/01 prior to depositing the application in first-class mail serves as a certificate of mailing entitling the application to a filing date thereof represents a fundamental misunderstanding of the certificate of mailing procedure and the return receipt procedure specified by MPEP 503. Petitioners filed the papers received on 10 October, 2001, for the purpose of obtaining an application filing date. 37 CFR 1.8(a)(2)(I)(A) explicitly states that Certificate of Mailing procedures do not apply to, and no benefit will be given to a Certificate of Mailing or Transmission on the filing of a national patent application specification and drawing or other correspondence for the purpose of obtaining an application filing date.¹ The actual date of receipt is used for all other purposes.² As petitioners' application was received on 10 October, 2001, that is the filing date to which the application is entitled.

Additionally, petitioners should note that the return receipt postcard serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO, **not** the date petitioners placed on the card before mailing the application to the USPTO. Petitioners' postcard receipt shows a USPTO Office date stamp of 10 October, 2001. Therefore, the postcard receipt is *prima facie* evidence that the application was received on 10 October, 2001. The postcard clearly does not entitle petitioners to a filing date of 24 September, 2001, which is, at best, evidence of the date which petitioners intended to deposit the application with the USPS.

Turning to petitioners' argument that postal delays and delays within the USPTO were responsible for petitioners' receiving a later-than-desired filing date, petitioners are advised that they could have avoided the predicament that has now occurred by filing the application via USPS Express Mail Post Office to Addressee service in accordance with 37 CFR 1.10. Any correspondence received by the USPTO that was delivered by the "Express Mail Post Office to Addressee" service of the USPS will be considered filed in the Office on the date of deposit with the

¹Assuming, *arguendo*, certificate of mailing procedures had been available for the filing of these papers, the papers filed on 10 October, 2001, would not be entitled to the benefit of the certificate of mailing because petitioners did not follow the certificate of mailing procedures outlined at 37 CFR 1.8(a).

²37 CFR 1.8(a).

USPS. However, since the present application was not filed by Express Mail, the provisions of 37 CFR 1.10 are not available. In choosing not to send the application papers by Express Mail Post Office to Addressee Service, petitioners assumed the risk that the application would not be accorded the desired filing date because of delays in the delivery of mail or receipt in the USPTO. Petitioners simply have no evidence that the application is entitled to a filing date earlier than 10 October, 2001.

In summary, petitioners have not shown by a preponderance of the evidence that the application papers were received on 24 September, 2001. The petition is therefore dismissed.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of 10 October, 2001, using the application papers filed on that date.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Douglas I. Wood at (703)308-6918.



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